

HOUSE STUDY GROUP TEXAS HOUSE OF REPRESENTATIVES

P.O. Box 210, Austin, Texas 78769

(512) 475 5011

180
194
67-13
Gonzalo Barrientos
Bill Blythe
Bob Bush

Steering Committee:

Frank Gaston

Ernestine Glossbrenner, Chair

Bill Messer

Al Price

Bob Simpson

Ed Watson

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**interim
news**

May 17, 1982

Number 67-13

THE 1982 SPECIAL SESSION: A PREVIEW

Gov. William P. Clements Jr. has called a special session of the Legislature for 10 a.m., Monday, May 24, 1982. The call is for consideration of a constitutional amendment repealing the state property tax and for a one-time appropriation for construction of new buildings and for building repair and renovation at universities that benefit from the tax.

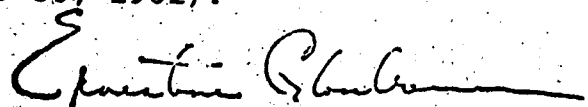
This report examines the background of the issues to be considered during the special session. For further information, refer to the following HSG reports:

--Appropriations Report, No. 3: Higher Education Finance (April 28, 1981).

--Special Legislative Report, No. 73: The 1981 Special Session: A Preview (June 29, 1981), especially pp. 6-10.

--Interim News, No. 67-4: The State Property Tax Lawsuit: Background, Status, and Prospects (Sept. 30, 1981).

--Special Legislative Report, No. 77: The Cost of a Tower: Assessing Texas College Building Needs (Nov. 30, 1981).



Ernestine Glossbrenner
Chair

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INTRODUCTION

State-supported senior colleges and universities in Texas receive funds for construction and acquisition of buildings in three ways. Seventeen institutions depend almost exclusively on revenue from the state ad valorem property tax. Proceeds from the Permanent University Fund (PUF) pay for construction at the long-established University of Texas and Texas A&M system schools. General revenue is appropriated each biennium to pay for construction needs at the newer UT and A&M system schools (except for the University of Texas at Arlington, an ad valorem school) and at all other state-supported senior college campuses.

The 17 ad valorem schools are constitutionally barred from receiving general revenue to pay for new buildings on their campuses. However, the constitutional endowment set aside for that purpose has been rapidly dwindling since 1979, when the Legislature set the state property tax assessment ratio at 0.0001 percent, virtually eliminating the tax. Despite several tries and numerous proposals, the Legislature has not yet created a new funding source for the schools. Some of the 17 schools have filed a lawsuit challenging the 1979 assessment-ratio statute, which in effect "repealed" the constitutionally imposed tax. The plaintiffs say that it is unfair to fund construction at other state colleges and exclude them. If they prevail, state taxpayers might have to pay the state property taxes left uncollected since Jan. 1, 1980, an amount estimated at roughly \$856,000,000.

With the lawsuit set to be heard soon, Governor Clements has called a special session of the Legislature and has asked that the state ad valorem tax and dedicated fund be repealed, thereby removing the restriction on general-revenue construction spending at the 17 schools. He wants a special appropriation made to compensate for the decline of construction funding over the past two years. As in the 1981 special session, he has indicated that the question of a more permanent funding source for the ad valorem campuses, and the issue of state higher education funding in general, should be left for the 1983 regular session. In the 1981 special session, the Legislature, particularly the Senate, chose to settle the issue of a alternative funding source at that time, but the two houses could not resolve their differences in approach.

In this 1982 special session, with only the college funding question in the call, and in the midst of the party primary runoff election campaigns, the Legislature faces a number of difficult questions. Should a funding mechanism, other than general revenue appropriations for individual projects, be established to replace the existing levy of 10 cents per \$100 valuation? If so, what source of funding should be used -- a state property tax at a lower rate, oil or gas severance taxes, the Available School Fund, the state budget surplus, general obligation bonds, the PUF, general revenue funding under a specific formula? Or should the means of funding be left open to future designation by statute? If the Legislature repeals the state ad valorem tax, forgives back taxes and makes a stopgap appropriation, questions will remain. Would the lawsuit challenging the original tax "repeal" still proceed? If the statutory "repeal" is thrown out in court, could the Legislature forgive the back taxes that have not been collected? Would a new lawsuit be filed on behalf of one of the institutions not funded by the PUF, seeking to open that fund to all UT and A&M system schools, or to every state senior college and university, on the ground that the present funding system constitutes unequal treatment? And if a permanent funding source is established for all of the state colleges and universities, is state college construction money being spent efficiently and in response to real need?

RULES AND PROCEDURES

Special sessions of the Legislature are governed by most of the constitutional and legislative rules that apply to regular sessions. However, some regular rules do not apply, and some rules apply only to special sessions.

The Governor's Call

The Legislature may meet in special session only when called into session by the Governor. Article 4, Section 8, of the Constitution gives the Governor the power to call special sessions "on extraordinary occasions." The Governor's proclamation calling the session (the "call") "shall state specifically the purpose for which the Legislature is convened."

Article 3, Section 40, says that the Legislature cannot meet in special session for more than 30 days. (This means calendar days, not "legislative" days, so a session that begins on May 24 must end by midnight of June 22.) This section also says that "there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to [the Legislature] by the Governor." The Governor may expand the call to include additional topics. If the session does not produce the results desired by the Governor, he may call additional sessions. No particular amount of notice is required for special sessions, so back-to-back ones are possible.

Special Session Subjects

Bills

The Governor's call is required only to set forth the "purpose" of the session. The courts have held that the Governor need not "state the details of legislation..." (Ex parte Fulton, 215 S. W. 331). In an 1886 case, the Texas Supreme Court ruled that the "subject" of a special session called to reduce taxes was in fact "the whole subject of taxation," so that a bill raising taxes could be considered (Baldwin v. State, 3 S.W. 109).

Under current judicial practice, courts would decline to investigate whether a law passed during a special session had been properly considered by the Legislature. Under the "enrolled bill doctrine," the courts do not hear questions of whether a bill that passed both Houses and was signed by the Governor complied with the procedural rules set by the Constitution. (City of Houston v. Allred, 71 S. W. 2d 251; Maldonado v. State, 473 W. W. 2d 26).

Section 40's limitation on subject matter may be enforced in two ways. A point of order may be raised against any bill that a legislator feels is not within the scope of the call. And the Governor may veto any bill that he decides should not have been passed, for whatever reason.

According to the "Explanatory Notes" in the annotated edition of the House Rules (page 254):

In order to abide by the spirit of this section [Article 3, Section 40], it becomes imperative that a presiding officer, as well as individual legislators, strictly construe this provision. The rule should be rigidly adhered to in special sessions of the legislature, and points of order raised against bills on the ground that they do not come within the purview of the governor's call or have not been specially submitted, should be uniformly sustained, where it clearly appears that the bill is subject to objection."

The limitation on subject matter is subject to interpretation by the presiding officer of each house. In one ruling cited in the annotated rules (page 256), Speaker Waggoner Carr ruled that "it was not the intention of this section to require the Governor to define with precision as to detail the subject of legislation, but only in a general way, by his call, to confine the business to the particular subjects.... It is not necessary nor proper for the Governor to suggest in detail the legislation desired. It is for the Legislature to determine what the legislation shall be."

Carr went on to rule that amendments to a bill under consideration did not have to be weighed against the standard set by Section 40. As long as the amendment was germane to the bill, and the bill itself was within the subject of the call, the amendment would be permissible.

The annotations state that the Speaker may review all bills filed with the Chief Clerk, and admit to first reading only those that he determines are within the subjects of the call. Any bill may be filed with the Chief Clerk, but the Speaker and the Parliamentarian can review all bills prior to first reading and eliminate those not within the call. However, it has been recent practice for the Speaker to refer all bills to committee on first reading, regardless of whether they were within the subjects of the call.

Resolutions

House Rule 5.118 states that "the subject matter of house resolutions and concurrent resolutions does not have to be submitted by the governor in a called session before they can be considered." This rule follows an Attorney General's opinion (No. M-309 (1968)).

Until 1972, constitutional amendments could not be proposed during a special session. In that year the voters approved an amendment to Article 17, Section 1, allowing constitutional amendments to be considered "at any special session when the matter is included within the purposes for which the session is convened."

Proposed constitutional amendments may thus be considered in a special session only if they are within the Governor's call. The precedents discussed above for interpreting what is encompassed in the call apply to resolutions. But there is one significant difference.

The Governor does not have the power to veto proposed constitutional amendments. (See Attorney General's Opinion M-1167 (1972), which cites an earlier opinion (To Honorable F. O. Fuller, Feb. 13, 1917).) Therefore, it is up to the Legislature to decide whether a proposed constitutional amendment is within the scope of the special session.

During the 1981 special session, the subject matter limitation was interpreted strictly when points of order were raised. As HJR 6, the water trust fund amendment, was being considered, Rep. Gonzalo Barrientos raised the point that the resolution went beyond creation of a water trust fund by authorizing a \$500 million pledge of state credit and increasing the interest rate yield on state bonds. Speaker Pro Tem Craig Washington sustained the point of order. Governor Clements then quickly issued a clarification of his call to allow all of the subjects included in HJR 6 and its companion bill, HB 8, to be considered.

Governor Clements' call to the 1982 special session, issued on May 6, refers only to repeal of the state property tax and a one-time appropriation to fund new construction and repair and renovation at universities that benefit from the tax. His call to the 1981 special session on this subject included only "repeal of the state ad valorem tax." Left unresolved was whether a higher education fund or some other alternative means of funding these campuses dependent on the state ad valorem tax could also be included.

During the 1981 special session consideration of HJR 1, which proposed repeal of the state ad valorem tax, Rep. Wilhelmina Delco offered an amendment to repeal the tax and also to create a \$2 billion Higher Education Endowment Fund by dedicating half of the state revenue surplus. Her amendment would have also expanded coverage of the Permanent University Fund (PUF) to include construction at all of the University of Texas and Texas A&M system schools. Rep. Bill Presnal raised a point of order against the Delco amendment saying that it was not within the subject matter of the Governor's call and was also not germane to the proposed resolution. Speaker Clayton ruled that the portion of the Delco amendment dealing with changes in the PUF was outside of the Governor's call.

Rep. Don Rains introduced an amendment requiring construction funding for the 17 ad valorem schools under guidelines to be established by law. Rep. Bob Davis raised a point of order, saying that the amendment mandated spending of state funds and was outside of the scope of the Governor's call. Rep. Rains withdrew his amendment before the Speaker ruled on the point of order. Thus, the question of whether an alternate funding mechanism to replace the repealed state ad valorem tax could be considered as part of a repeal amendment was not decided in the House.

Time Limits

Article 3, Section 39, of the Constitution sets the effective date of all laws at 90 days following the adjournment of the session at which they are enacted. This applies to special sessions as well as to regular sessions. The Legislature may override this rule by a vote of two-thirds of the membership of each house.

Proposed constitutional amendments must be published in newspapers along with "a brief explanatory statement" prepared by the Secretary of State and approved by the Attorney General. The first publication must occur no later than 50 days before the election, which means by Sept. 13 for this year's general election on Nov. 2. During the 1981 special session, the Secretary of State's office indicated that it would need at least a month to prepare the explanations and arrange for timely publication. However, there is no requirement that a constitutional amendment election be held on the same day as the general election, so the Legislature could set the election for any time as long as it allowed at least 50 days for the required explanatory statements to be published.

The 60-day limit on the introduction of bills of course does not apply during a special session. However, the "end-of-session" rules in Section 5.017 still apply. (No bills may be considered on second reading within the last 72 hours; no bill may be considered out of its regular order within the last 48 hours; only conference committee reports and concurrence in Senate amendments may be considered within the last 24 hours.) The rule allowing a member's debating time to be extended beyond 10 minutes by majority vote does not apply after the last five calendar days of a special session (Rule 4.107).

Other Rules and Procedures

Since the 67th Legislature is still in office, the Legislature does not need to adopt new rules or housekeeping measures or establish new committees for the special session. Resolutions to amend the rules or the Housekeeping Resolution may be offered.

The Housekeeping Resolution allows each House member's operating account \$4,500 for each month during the interim and \$5,500 "for each month in which the Legislature is in session." The House Business Office said members will receive \$5,500 for May. Should the session extend into June, the extra funds could be allocated for that month as well, but no decision had been made.

Bills may be prefiled 30 days before the start of a special session.

The Comptroller is required by Article 3, Section 49a, of the Constitution to submit a supplemental revenue estimate to the Legislature prior to the start of the special session. Comptroller Bob Bullock has already certified that the state has sufficient revenue to cover "any reasonable college building program appropriation" and specifically certified the \$100 million appropriation proposed in the pre-filed HB 1.

THE 1981 SPECIAL SESSION

Governor Clements called the 67th Legislature into the first special session of his administration on July 13, 1981. The 1981 special session ran for the full 30 days and adjourned on Aug. 11. The Governor's initial call, issued on June 11, included five topics:

1. Repeal of the state ad valorem tax
2. Creation of a Texas water trust fund
3. Congressional redistricting
4. Revision of the property tax code
5. Consideration of the medical practices act

The Legislature completed action on all of these topics except for repeal of the state ad valorem tax. In November, 1981, the voters rejected the proposed water trust fund constitutional amendment. The congressional redistricting act was invalidated after objection by the U.S. Justice Department under the federal Voter Rights Act and was partially redrawn by a three-judge federal court panel.

On July 15 the governor had clarified his call to say that he meant to allow consideration of matters such as a pledge of state credit and an increase in the allowable interest rate on state bonds-- items included in the water trust fund amendment but not directly related to creation of the fund.

On Aug. 7, the Governor added 12 new subjects to his call. Among these were additional veterans land bonds, gasohol, bingo implementation, psychotherapist regulation, defects in indictments and informations, and ten appropriation changes. On Aug. 8, Clements added two more subjects -- Ecletto Creek Watershed District board election and drug abuse treatment fees. The Legislature completed action on all of the listed topics except for "Department of Public Safety enforcement of vehicle weight and dimension limits within cities in order to comply with federal funding requirements," clarification of terms of office for new Court of Appeal justices, treatment of defects in indictments and informations, and disposition of funds collected or received by the state technical institutions.

No point of order was raised against the consideration of SJR 8, SB 16, and SB 17, dealing with tax increment financing and tax abatement, despite the fact that those subjects were not included within the Governor's call, although arguably certain sections of those measures were within the scope of "revision of the property tax code." No objection was raised against SB 21, West Brazoria County Drainage District amendments, or SB 28, creation of Brazoria County Watershed Drainage Districts, even though technically these bills were not within any of the subjects in the Governor's call. Governor Clements signed the bills.

The opening day's events in the 1981 special session were as follows:

- call to order
- roll call
- invocation
- address by the Speaker
- reading of the Governor's proclamation calling the session
- resolution notifying the Governor and the Senate that the House was in session
- resolution granting each house permission to adjourn for more than three days without the consent of the other house
- first reading and referral of bills and resolutions
- motions to suspend the five-day posting rule to allow public hearings to be held sooner

All bills filed with the Chief Clerk were read and referred to committee, the same practice followed in the 1978 special session. Committee hearings were held on several bills dealing with subjects not within the Governor's call at the time of the hearing, including bingo implementation, tax increment financing and tax abatement, and the pension code. HB 3, bingo, and HB 126, the pension code, were reported favorably from their respective committees before the Aug. 7 expansion of the Governor's call included those subjects, but the Calendars Committee did not set them for floor consideration until after they were included in the call.

THE STATE AD VALOREM TAX - HIGHER EDUCATION FUNDING DISPUTE

Seventeen state colleges and universities receive their principal funding for construction and acquisition of buildings from state ad valorem tax revenue. The 17 ad valorem campuses are the University of Texas at Arlington (formerly Arlington State College), Texas Tech, North Texas State, Lamar, Texas A&I at Kingsville, Texas Woman's University, Texas Southern, Midwestern, the University of Houston central campus, Pan American, East Texas State, Sam Houston, Southwest Texas, West Texas State, Stephen F. Austin, Sul Ross, and Angelo State. The tax is authorized in Article 8, Section 1-e of the Texas Constitution, and Article 7, Section 17 sets the tax rate at 10 cents per \$100 valuation. The tax revenue is dedicated to a special fund used for "acquiring, constructing, and initially equipping buildings or other permanent improvements." Revenue from the fund cannot be used for building repair or rehabilitation. General revenue cannot be used for construction or acquisition of buildings, although tuition, fees, and private endowments can be used for those purposes. Estimated revenue from the fund is allocated by formula among the 17 campuses at the beginning of a ten-year period, with 85 percent being allocated for the first six years and 15 percent held back to be allocated under a different formula for the remaining four years.

The funding problem began in 1978 when Rep. Wayne Peveto determined that varying county tax assessment practices made the state ad valorem tax inequitable. Since local counties used different assessment ratios, property owners in one county might pay taxes on only 10 percent of the appraised value of their property while those in another county might pay taxes on 90 percent of the value of their property. Rep. Peveto obtained a federal injunction against further collection of the tax.

In 1979, the Legislature passed a new property tax code that eventually required local taxing entities to use 100 percent property tax assessments. Since the application of the 10-cent tax rate to values assessed at 100 percent statewide would have greatly increased the revenue generated by the tax, the Legislature was under some pressure to act. One course considered was the setting of a special statewide assessment ratio of 16 percent for the state property tax. This ratio, coupled with a 10-cent rate, would have produced about the same amount of revenue as the tax did with the varying county assessments. But sentiment in the Legislature shifted toward abolishing the state property tax entirely and creating a new college construction funding mechanism. An amendment set the assessment ratio for the state ad valorem tax at 0.0001 percent beginning on Jan. 1, 1980, a level at which practically no state property tax would be collected.

The Legislature passed this statutory "repeal" of the constitutionally mandated state ad valorem tax as a temporary back-up measure. Also considered during the 1979 session was a constitutional amendment which would have repealed the state property tax and would have established a State Higher Education Assistance Fund (SHEAF) as a replacement for the ad valorem fund. SJR 7 would have created a new fund using general revenue appropriated under a constitutional formula. However, a House-Senate conference committee could not agree on what funding formula should be used.

The reduction of the assessment ratio virtually eliminated the tax. In fiscal year 1979 (Sept. 1, 1978 through Aug. 31, 1979), the state ad valorem tax raised \$49,249,024. In fiscal 1980, during which the Jan. 1, 1980 effective "repeal" of the state ad valorem tax occurred, the tax raised \$41,350,650 (This figure, like all the others, includes collection of delinquent taxes.) Since taxes are assessed in January and collected in October, the assessment change was not really reflected until fiscal year 1981, when practically no new revenue came into the construction fund. Delinquent taxes from prior years and depository interest still brought in \$12,592,153. Since no construction bonds could be sold after the future revenue source backing those bonds had been eliminated, the Comptroller began distributing in cash the funds raised by the tax before it was cut off and by the collection of delinquent taxes and depository interest after the cutoff. Since Sept. 1, 1978, the Comptroller has distributed \$100,498,168 to the 17 campuses for construction and acquisition funding, but over 85 percent of that amount was distributed in fiscal years 1979 and 1980. Article 7, Section 17 requires the property tax fund revenue to be allocated by formula among the 17 schools during a ten-year period (the present ten-year period began on June 1, 1978) with 15 percent of the funds held back for six years (until June 1, 1984) and allocated under a different formula. Thus, \$16,656,905 is to be distributed in 1984. (See Appendix)

Partly in an attempt to force action by the Legislature in the 1981 session on replacing the state ad valorem fund, on July 28, 1980 a student and three regents of Midwestern University in Wichita Falls filed in the Texas Supreme Court an original petition for a writ of mandamus determining that the statutory assessment ratio of 0.0001 percent set for the state ad valorem tax was unconstitutional. In September, 1980, the Supreme Court declined to consider the petition, and the plaintiffs filed suit in district court. A hearing was set for December, 1980, but the first of a series of postponements was agreed upon to give the Legislature time to enact an alternative funding mechanism for construction on the 17 affected campuses.

On Nov. 14, 1980, Attorney General Mark White issued an opinion stating that since the 17 campuses had already received state ad valorem tax funds for the ten-year period beginning June 1, 1978, they were barred from receiving any general revenue for building construction or acquisition. The 17 campuses had requested a general revenue appropriation of almost \$101 million to fund new construction and building acquisition during the 1981-1983 biennium. The opinion meant they were forced to rely exclusively on the dwindling state ad valorem fund.

As the 67th Legislature began, several proposals were on the table to deal with college construction funding. The proposals generally included expansion of the Permanent University Fund to include all University of Texas and Texas A&M system campuses and increasing the bonding authority from 20 percent of the value of the PUF to 30 percent. But several competing proposals had emerged to provide construction funds for the 17 schools. Some wanted to set the state property tax at 3 cents per \$100 and deposit part of the revenue in a new fund until the endowment reached \$2 billion, then use the tax for other purposes or repeal it. Other revenue sources, such as dedicating part of the oil or gas severance taxes or increasing tuition were also considered. The House voted to deposit half the state surplus each year into a Higher Education Endowment Fund (HEEF) until it reached \$2 billion. The Senate voted to dedicate 25 percent of the annual income of the Permanent School Fund to a higher education fund. A conference committee between the House and the Senate deadlocked. The House held out for dedicating half the surplus. The Senate dropped the Permanent School Fund idea but insisted on either a 3 cents per \$100 ad valorem tax or a \$100 million per year general revenue appropriation.

The Legislature did pass HB 2356, requiring retailers to remit part of the interest they earn on the sales-tax portion of the price of an item sold on credit. The revenue from that tax, which took effect on Jan. 1, 1982,, was to be dedicated to a new "higher education available fund," contingent on the creation of such a fund. Since no fund was created, the credit sales tax revenue, an estimated \$44,175,000 during this biennium, goes to general revenue.

The call for the 1981 special session included "repeal of the state ad valorem tax." The Governor indicated that he opposed any effort to use a state property tax to fund university construction. On July 15, the House passed HJR 1 by Rep. Stan Schlueter. The proposed constitutional amendment would have repealed the state ad valorem tax and the tax fund, forgiven any back taxes due after Dec. 31, 1979, allowed the counties to retain any delinquent taxes, and allocated any previously collected taxes according to law. Rep. Wilhelmina Delco offered an amendment to expand the PUF to include UT and A&M system schools and increase the bonding authority. It would also have created a Higher Education Endowment Fund, made up of half the state revenue surplus, any remaining undistributed state property tax receipts, income from fund investments, and any other revenue dedicated or appropriated to the fund by law. Half the surplus would no longer have been dedicated after the fund reached \$2 billion. Until the fund reached \$2 billion, the Legislature would appropriate at least \$80 million per year from its incoming revenue, or if insufficient funds were deposited that year, from general revenue. The Coordinating Board would distribute it by formula to all state senior colleges and universities created by general law, excluding the PUF institutions. These funds could be used for construction and acquisition and for repairs, capital equipment, and library books and materials. Use of general revenue for construction or repairs would be prohibited except at Prairie View A&M and Texas Southern University. The Delco amendment was essentially the same as the House proposal passed during the 1981 regular session.

The Speaker sustained a point of order against the Delco amendment because it dealt with the PUF and was therefore beyond the scope of the Governor's call. Rep. Don Rains offered an amendment to require funding for construction, repair, and capital equipment for all non-PUF state-supported higher education institutions other than junior and community colleges but left open how that might be accomplished by law. Rep. Delco moved to table the Rains amendment, and that motion failed on a division vote of 44 ayes, 71 nays. Rep. Bob Davis then raised a point of order that the Rains amendment was outside of the scope of the Governor's call since it mandated spending of state funds. The Rains amendment was withdrawn before any ruling was made. HJR 1 then passed by a vote of 130 ayes, 5 nays.

The Senate adopted an amendment by Sen. Pete Snelson to forgive all state ad valorem taxes levied between Dec. 31, 1979 and Jan. 1, 1982 and then set a 3 cents per \$100 tax with the revenue dedicated to a Higher Education Endowment Fund (HEEF). Sen. Grant Jones successfully offered an amendment to allow a residence homestead exemption of up to 40 percent for 1982 through 1984, 30 percent for 1985 through 1987, and 20 percent for 1988 and beyond, with an additional exemption of not over 20 percent for those who were disabled or over 65.

The HEEF was to receive revenue from the 3 cents per \$100 tax, undistributed receipts from the previous ad valorem tax, income from fund investments, and any other revenue authorized by law. Each year all of the state ad valorem tax revenue, or \$100 million, whichever was less, would be distributed to the colleges, with any amount over \$100 million deposited into the HEEF. When the HEEF reached \$2 billion, the Legislature would decide whether to allow the tax to end or to retain it for other purposes. The HEEF would fund new construction and acquisition, repairs, capital equipment, and library books and materials. Use of general revenue for those purposes would be barred except to replace uninsured disaster losses. That bar could be lifted in cases of demonstrated need by a two-thirds vote of both houses. The Senate proposal did not deal with the PUF schools since that would have made it subject to a point of order in the House. The Senate version passed by a vote of 23 to 7 on Aug. 11, the final day of the special session.

The Senate had delayed consideration of the college funding question partly because it was waiting for the Governor to include higher education funding, including expansion of the PUF, within his call. After Senate passage on the last day, the House refused to concur with the Senate amendment and appointed members of a conference committee. The Senate, by a vote of 19 to 11, refused the request of the House to appoint a conference committee. The House then discharged its conferees and refused to concur, and the special session adjourned without any final action taken on repeal of the state ad valorem tax or higher education funding.

RECENT DEVELOPMENTS

Governor Clements had earlier indicated that he preferred to wait until the 1983 regular session to deal with the higher education funding issue. However the setting of a fairly firm June 2 trial date for the challenge of the statutory "repeal" of the state ad valorem tax apparently changed his view. At first he said he was inclined to wait until after the trial and call a special session only if the state lost the suit, which he was convinced would happen. But the continuing uncertainties about the timing of the suit and the need to pass a constitutional amendment by mid-August to get it on the Nov. 2, 1982 ballot led Clements to call a special session for May 24.

Six of the 17 tax-fund institutions are plaintiffs in the lawsuit -- Midwestern University, Lamar University, and the Texas State University System, comprised of Angelo State University, Sam Houston State University, Sul Ross State University, and Southwest Texas State University. In the amended petition filed last January, the plaintiffs asserted that the 1979 statutory reduction by the Legislature of the state property tax assessment ratio to 0.0001 percent was in direct conflict with the Texas constitutional provision for state ad valorem tax building fund for the 17 campuses. By cutting off this constitutional funding source, the Legislature placed students at the 17 campuses in an inferior position to those at institutions funded by other means, an unconstitutional denial of equal protection of the law. The plaintiffs asked the court to declare the assessment law unconstitutional insofar as it conflicts with Article 7, Section 17, the building fund provision, and to require the appropriate officials to carry out the terms of the Constitution.

After many postponements, the case of Boyer v. State Property Tax Board was set for initial hearing on June 2. The judge has not been assigned and no pretrial hearing has been held or pleadings filed. Thus, the scope of any possible decision, including whether back taxes would be due if the statute were invalidated, is not yet clear. Assistant Attorney General James P. Allison will represent the state. Shannon H. Ratliff of the Austin law firm McGinnis, Lockridge and Kilgore was named attorney for the state college plaintiffs after Attorney General White allowed them to hire outside counsel to sue another state agency.

Special Session Proposals

HJR 1 and HB 1

Some special session proposals for the ad valorem tax have already been prefiled. HJR 1, by Clayton and Schlueter and co-sponsored by over 100 members, is essentially the same measure passed by the House during the special session. HJR 1 would prohibit any state ad valorem tax and forgive all such taxes levied after Dec. 31, 1979, although those who had paid any tax since that date (probably no more than a few cents) would not be entitled to a refund. Article 7, Section 17, levying the tax and creating the construction fund, would be repealed.

All delinquent state property taxes levied before Dec. 31, 1979 would be kept by the counties collecting the tax. All state property tax receipts collected before the effective date of the amendment would be distributed to the institutions eligible to receive them under prior law and could be expended for the purposes provided under prior law (acquiring, constructing, and initially equipping buildings or other permanent improvements other structures such as dormitories and athletic facilities) and also for repair and renovation of permanent improvements.

HB 1, by Clayton and Presnal, would appropriate from general revenue a sum not to exceed \$100 million to those institutions entitled to receive the tax imposed by Article 7, Section 17, for the purpose of constructing permanent improvements. However, the HB 1 appropriation would be contingent on adoption of HJR 1 repealing Article 7, Section 17, since that provision bars general revenue spending on permanent improvements at the 17 ad valorem campuses. The \$100 million figure is based generally on past budget requests and other determinations of need and may be changed. Also still to be determined is the formula for distributing the appropriation, whether by the current ad valorem tax distribution formula in Article 7, Section 17 or some other method. On April 28, Comptroller Bob Bullock certified pursuant to Article 3, Section 49a of the Texas Constitution that the state can cover the \$100 million appropriation in the prefiled HB 1 or any other "reasonable" college building program appropriation.

The Delco Amendments

Rep. Delco has proposed two constitutional amendments, HJR 2 and HJR 3, based generally upon Sen. Snelson's proposal during the 1981 special session. HJR 3 would forgive state ad valorem taxes levied between Dec. 31, 1979 and Jan. 1, 1983. Beginning on Jan. 1, 1983, the state would levy a tax of 3 cents per \$100, based on a 100 percent assessment ratio. A series of declining homestead exemptions would be allowed. Each year, \$100 million, or all the state ad valorem tax revenue, whichever was less, would be distributed to all non-PUF public senior colleges and universities created by general law. Any excess revenue over \$100 million would be deposited into a Higher Education Endowment (HEEF). The fund would also contain the undistributed receipts from the old ad valorem tax, investment income, and any other revenue appropriated or dedicated by law.

When the HEEF reached \$2 billion, the 3 cents per \$100 tax would be abolished. Then, 90 percent of the fund income would be distributed each year to the eligible institutions. The Legislature could also levy a new state ad valorem tax up to 3 cents per \$100 to supplement fund income, add to the fund endowment, or for other purposes. HEEF proceeds could be used to acquire land, construct and equip buildings or other permanent improvements, make major repairs and renovations, and acquire capital equipment and library books and materials at public senior colleges and universities. Funds would be allocated for ten-year periods under a formula established by the Legislature, or should it not set a formula, by a backup committee. An agency designated by the Legislature would develop guidelines to review and approve projects. No appropriations other than those required by law could be used for fund purposes, except to replace uninsured disaster losses, unless appropriated by a two-thirds vote of both houses.

HJR 2 is the same as HJR 3 except that it would also restructure the Permanent University Fund. All UT and A&M system schools would be added to the PUF. UT's bonding authority would be increased from two-thirds of 20 percent of the value of PUF assets to 20 percent, and A&M's from one-third of 20 percent of the value of PUF assets to 10 percent. The statutory division of the Available University Fund of one-third to A&M and two-thirds to UT would be placed in the Constitution. Both systems would use part of the AUF revenues to pay off bonds and notes. A&M's one-third also would be used to support system administration and Texas A&M at College Station and Prairie View A&M, in equitable proportions. Any remainder of UT's two-thirds would be used for support and maintenance of the University of Texas at Austin and for UT system administration. General revenue could not be used for acquiring land, constructing and equipping buildings and other permanent improvements, or for repair and rehabilitation except to replace uninsured disaster losses. However, general revenue could be used to support and maintain Prairie View A&M and Texas Southern University. The Coordinating Board would develop guidelines to determine office, classroom, or laboratory construction needs at PUF and HEEF schools. Construction would require the approval of the Coordinating Board or the Legislature.

Rep. Delco had requested a formal opinion from the Attorney General on the Legislature's authority to forgive retroactively the ad valorem taxes levied after Dec. 31, 1979. The Attorney General's opinion committee answered that it is the policy of the Attorney General's office not to issue opinions on matters in litigation. But the Attorney General's staff later indicated that Attorney General White might reconsider the request. The most recent estimate by the Legislative Budget Board is that for 1980, 1981, and 1982, the gross tax levy for the 10 cents per \$100 valuation state ad valorem tax, collected at the regular county assessment ratios rather than at the statutorily mandated 0.0001 percent assessment ratio, would be around \$856,406,000, with the net revenue to the state after discounts and collection fees estimated at \$822,492,000.

College Funding and the Campaigns

The college funding dispute has become an issue in some of the 1982 political campaigns. Governor Clements' Democratic opponent, Attorney General Mark White, has criticized the Governor for failing to find a solution to the college-funding problem earlier. He called a one-shot appropriation a "Band-Aid approach" and advocated establishment of a new higher education endowment fund during the special session. Republican candidate George Strake blamed Lieutenant Governor Hobby for the Senate's failure to agree to a repeal of the ad valorem tax in 1981. College funding also was an issue in the Democratic primary race for commissioner of the General Land Office. Candidate Pete Snelson, as chair of the Senate Education Committee, had proposed during the special session that college construction be financed by a 3 cents per \$100 state ad valorem tax. Candidate Garry Mauro proposed abolishing the state property tax and dedicating severance taxes on oil and gas produced on public land--around \$200 million a year--to a Texas State University Fund. Sen. Snelson replied that since one-fourth of all oil and gas severance taxes flow into the Available School Fund, dedicating all such severance taxes to a higher education fund would result in a shortfall of around \$50 million to the Available School fund and would require an increase in local taxes,

and would also take around \$150 million per year from general revenue. Rep. Dan Kubiak opposed both Mauro's plan and retention of the state ad valorem tax. Mauro attacked Snelson for advocating a tax increase; Snelson responded that he wanted a tax decrease, from 10 cents to 3 cents per \$100. At Lt. Gov. Bill Hobby's request, Snelson has agreed to sponsor the proposed constitutional amendment to abolish the state property tax, citing the continuing recession and the greater demands on local ad valorem taxes due to federal budget cuts and the "New Federalism" proposal to return some federal programs to the states. Snelson also said that he wants Governor Clements to expand his call to include higher education funding and expansion of the PUF to all UT and A&M system campuses. Snelson and Mauro are now in a runoff election to be held on June 5. (Snelson has prefiled SJR 1; it is identical to HJR 1.)

Governor's Task Force Proposals

Governor Clements' Task Force on Higher Education recently made several recommendations concerning funding of campus construction. The task force recommended that the state ad valorem tax be repealed and replaced with a constitutionally dedicated construction fund to provide at least \$80 million per year for all public senior colleges outside of the UT and A&M system. The task force recommended no specific type of funding source and said it preferred a ten-year allocation to the affected campuses based upon a formula to be devised by the Coordinating Board or other agency designated by the Legislature. The task force said it would expand the purposes for which the fund could be used to include not only acquiring, constructing, and initially equipping buildings and other permanent improvements but also land acquisition, major repair and rehabilitation, and acquisition of capital equipment and library books and materials, and refunding of previously issued bonds. The PUF could be used for the same purposes, and all UT and A&M system schools should be added, with the PUF bonding authority increased from 20 percent to 30 percent. The task force also recommended banning use of general revenue for major repair and rehabilitation as well as new construction at all PUF schools. The group urged that sufficient PUF proceeds be available for significantly enhancing UT-Austin and Texas A&M at College Station. The task force would have the Coordinating Board approve new construction and repair projects at all state colleges and universities.

The Governor's task force also recommended that tuition be doubled now and eventually indexed to 16 percent of cost per student (it is currently about 4 percent) for residents and 75 percent for nonresidents, at the same time increasing student assistance. The group suggested that formula funding of state colleges should not be based solely on enrollment and square footage of buildings but geared more toward quality performance. Finally, the task force recommended that the senior colleges outside of the UT and A&M systems be realigned into four regional systems.

Council of Presidents

On April 29, the Council of Presidents of Texas Public Senior Colleges and Universities endorsed a resolution urging the Legislature not to abolish the state ad valorem tax without devising an alternative funding mechanism at the same time. Some presidents also questioned whether the proposed appropriation of \$100 million would be adequate to cover the spending needs of all 17 campuses.

The University of Houston Proposal

The University of Houston board of regents on May 3 adopted a resolution favoring repeal of the state ad valorem tax and a temporary appropriation during the special session, with the long-term funding questions left until the 1983 session. The Houston board has endorsed a proposal for using natural gas severance taxes to create a dedicated fund for all state senior colleges and universities outside of the UT and A&M systems. At the end of the next fiscal year, the Comptroller would certify the revenue raised by the natural gas severance tax. All subsequent revenue from the tax above that level, minus the 25 percent that goes to the Available School Fund, would be deposited into a Higher Education Capital Fund. When the fund reached \$3 billion, then all of the tax revenue would again be used for general purposes. All earnings from investment of the fund would be plowed back into the fund, with general revenue used to pay for college needs until earnings from the fund reached \$125 million per year. At that point, fund proceeds would be used rather than general revenue. The fund would be a dedicated revenue source to be used for not only construction, acquisition, equipment, and repairs, but for general academic enrichment as well. The Legislature would appropriate money from the fund, rather than making an automatic formula allocation among the various schools, for everything except academic enrichment, which would be allocated by a formula. The board would expand the PUF to include all UT and A&M system schools and increase the bonding authority. It also would require that the Legislature approve all new construction projects through appropriation of the AUF.

Texas Research League

The Texas Research League has dusted off a proposal first advanced in 1962 for dealing with construction funding at the non-PUF institutions. The TRL staff developed the plan for the Texas Commission on State and Local Tax Policy, which submitted it to the 58th Legislature. Rather than use general revenue to pay for individual projects at non-PUF schools or create an endowment fund, the TRL has offered what it considers a more direct approach. All UT and A&M system schools would be added to the PUF. Two separate constitutional amendments would be proposed: the first would repeal the state property tax now funding the 17 ad valorem campuses; the second, contingent on approval of the repeal amendment, would authorize issuance of a specific amount of general obligation bonds, backed by the full faith and credit of the state, to pay for the building construction and acquisition, land purchases, repair and rehabilitation, and perhaps library books and materials.

Once the bond authorization passed -- in an amount still to be determined but likely totaling several hundred million dollars -- the Coordinating Board could issue the bonds and distribute the proceeds for specific projects. The Coordinating Board would have to approve, and perhaps modify, long-range plans (probably ten years) submitted by each campus based upon an inventory of existing space, rehabilitation needs, efficient space utilization standards, projected enrollment, estimated costs, and priorities by time intervals. Each institution would have to submit an acceptable long-range plan before it could receive construction funds. Bond debt service would be paid out of general revenue, and would have a prior claim on state funds.

The TRL notes several advantages to a general obligation state bond funding system over a general appropriations pay-as-you-go approach and over a dedicated fund. General obligation bonds would allow long-range planning under Coordinating Board guidelines rather than the logrolling and political infighting of each school having to compete for biennial appropriations. A dedicated fund, with each school receiving a specific allocation by formula, creates a lack of supervision over the efficient spending of construction funds, TML says. Another drawback of financing bonds through a dedicated fund is that the interest rate tends to be higher on bonds backed by a specific revenue source than on general obligation bonds. Although the UT and A&M systems would still have their dedicated PUF under the proposal, the TRL suggests that they would also have to develop long-range comprehensive plans using similar guidelines as the non-PUF institutions.

Other Issues

Governor Clements as well as Speaker Clayton and Lieutenant Governor Hobby have indicated that they prefer a short session, particularly since several members of the House and Senate have primary runoff contests on June 5 either for reelection or for other offices. Although the Governor is not likely to open the call to other topics, the Legislature can consider other matters outside of the subject matter of the call, if no one raises a point of order in either house, and can enact bills if the Governor is willing to sign them.

Last year there was some discussion about the necessity of a special session to authorize state acceptance of certain federal block grant funds, particularly those for Community Development programs. The U.S. House Appropriations Committee later indicated informally that it did not intend to restrict the discretion of state agencies to allocate federal block grant funds previously received under several separate programs and Governor Clements accepted the federal funds in March.

Several programs have been cut back due to federal budget reductions. Rep. Ron Wilson has asked the Governor to expand the call to include an emergency appropriation of around \$2 million to make up for federal cuts in support for the Work Incentive (WIN) program, particularly cutbacks in children's daycare facilities for the working poor.

Rep. Bennie Bock has prefiled HB 2, to allow the Department of Highways and Public Transportation to determine which vehicle has the right-of-way on highway access roads. Rep. Frank Hartung wants to

consider changes in the management and investment of state funds. The Texas Public Employees Association has asked for an additional \$34 million appropriation to increase state health insurance program contributions to make up for unexpectedly large premium increases. According to TPEA Executive Director Gary D. Hughes, the state contribution to insurance coverage for the health plan chosen by most employees will rise from \$48 per month to \$58 per month, with the Employees Retirement System contributing \$2, for a total of \$60. But the basic premium rate is expected to rise to \$75.68, with state employees making up the difference out of their own salaries, effectively cutting the 8.7 percent salary increase scheduled for the next fiscal year. Rep. Dan Kubiak wants to consider an emergency appropriation of \$6 million for fire-ant control. Rep. Bill Blythe has asked for consideration of legislation to allow the Clear Lake City area to separate from the City of Houston and incorporate on its own. Governor Clements was quoted as saying that he would consider a suggestion by Lieutenant Governor Hobby that the special session be opened to include the issue of prison overcrowding.

Tom Whatley
House Study Group
May, 1982

APPENDIX

Although the 17 ad valorem institutions can use tuition, fees, and private endowments to finance construction, their principal source of funding has been revenue from the state ad valorem tax.

The following figures, supplied by the Comptroller's office, show how much revenue has been raised by and distributed from the state ad valorem fund tax both before and after its effective repeal. The first table shows the total amount of funds distributed to the 17 schools in fiscal years 1967-1978, not including interest earnings distributed. The second table shows the distributions for each year after the effective repeal of the tax and does include interest earnings. The last table summarizes the income of the college building fund during the same years.

DISTRIBUTION OF AD VALOREM TAX FOR COLLEGE CONSTRUCTION (Tax years 1966-1977; funds distributed in fiscal years 1967-1978)

<u>FUND</u>	<u>AGENCY</u>	<u>TOTAL AD VALOREM</u>
390	University of Texas at Arlington	\$ 32,029,645
391	Texas Tech University	32,754,587
392	North Texas State University	28,522,874
393	Lamar University	22,146,989
394	A&I at Kingsville	10,344,829
395	Texas Woman's University	6,346,428
396	Texas Southern University	7,664,693
397	Midwestern University	6,860,696
398	University of Houston	40,245,540
399	Pan American University	7,685,498
400	East Texas State University	10,908,733
401	Sam Houston State University	14,181,526
402	Southwest Texas State University	15,786,321
403	West Texas State University	8,615,622
404	Stephen F. Austin State University	15,323,228
405	Sul Ross State University	2,552,848
406	Angelo State University	<u>5,972,215</u>
		\$267,942,272

NOTE: Includes the payment of principal and interest on bonds and the distribution of the balance to institutions after bond retirement. Does not include interest earnings in the College Building Fund (fund 389) or the individual building funds (funds 390-406) which were also expended for the same purposes.

RECENT DISTRIBUTION OF AD VALOREM TAX BY YEAR AND SCHOOL
(Tax years 1978-present; funds distributed in fiscal years 1979-1982)

Fund	Agency	Distribu- tions FY 79 ¹	Distribu- tions FY 80	Distribu- tions FY 81	Distribu- tions FY 82 ²	Total
90	U.T. Arlington	5,406,909	5,214,429	1,609,786	321,293	12,552,417
91	Texas Tech	1,685,914	1,589,563	491,005	97,933	3,864,415
92	North Texas State	2,588,504	2,474,044	763,298	152,425	5,978,271
93	Lamar University	2,372,251	2,273,198	701,022	139,730	5,486,201
94	A&I Kingsville	556,628	525,614	162,072	32,332	1,276,646
95	Texas Woman's Univ.	893,580	859,338	264,974	52,949	2,070,841
96	Texas Southern Univ.	4,306,156	4,175,715	1,289,224	258,175	10,029,270
97	Midwestern Univ.	667,447	638,792	197,331	39,462	1,543,032
98	Univ. of Houston	3,056,331	2,911,738	901,029	179,286	7,048,384
99	Pan American Univ.	4,237,510	4,108,440	1,266,356	252,750	9,865,056
00	East Texas State Univ.	961,258	918,450	283,266	56,408	2,219,382
01	Sam Houston State Univ.	3,926,610	3,783,102	1,166,305	232,349	9,108,366
02	Southwest Texas State	5,960,421	5,753,017	1,773,281	353,510	13,840,229
03	West Texas State	541,310	513,100	158,586	32,074	1,245,070
04	Stephen F. Austin State	4,128,775	3,991,652	1,230,600	245,157	9,596,184
05	Sul Ross State Univ.	156,733	146,004	45,074	8,996	356,807
06	Angelo State Univ.	1,903,173	1,835,479	566,135	112,810	4,417,597
TOTAL		43,349,510	41,711,675	12,869,344	2,567,639	100,498,168

The fiscal year '79 Comptroller's annual report reflects distributions from the College Building Funds of \$84,932,546. This includes distribution of \$41,583,036 for the 1966-77 bond period. That amount is reflected in the 1966-77 bond period totals.

Fiscal 1982 distributions are through February 1982 only.

NOTE: Distributions include interest earned in the College Building Fund (fund 389) and interest earned in the individual building funds (funds 390-406).

COLLEGE BUILDING FUND SUMMARY
(Tax years 1978-present; fiscal years 1979-1982)

	<u>FY 1979¹</u>	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982²</u>	<u>TOTAL</u>
Ad Valorem Tax	49,249,024	47,350,650	12,592,153	1,644,848	110,836,675
Interest Earned	<u>1,487,841</u>	<u>1,463,631</u>	<u>2,166,016</u>	<u>1,169,518</u>	<u>6,287,006</u>
Total Building Funds Revenues	50,736,865	48,814,281	14,758,169	2,814,366	117,123,681
Less: Reserve (15% of Tax)	<u>7,387,355</u>	<u>7,102,606</u>	<u>1,888,825</u>	<u>246,727</u>	<u>16,625,513</u>
DISTRIBUTIONS	43,349,510	41,711,675	12,869,344	2,567,639	100,498,168

NOTES: • March-April 1982 Earnings Summary (unallocated and undistributed):

Ad Valorem Tax	\$ 209,280
Interest Earned	<u>339,577</u>
Total Earnings	548,857
Less: Reserve (15% of Tax)	<u>31,392</u>
Available for Distribution	\$ 517,465

- At April 30, 1982, the 15% constitutional reserve totals \$16,656,905. Under current law the reserve is not distributable prior to June 1, 1984.

The fiscal year '79 Comptroller's annual report reflects distributions from the College Building Funds of \$84,932,546. This includes distribution of \$41,583,036 for the 1966-77 bond period. That amount is reflected in the 1966-1977 bond period totals.

September 1981-February 1982.